IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.6938 OF 2005

1. Shri Daud Mahaboob Shaik,
2. Shri Bakhatar Bashamiya Fakir,
3. Shri Amir Mahaboob Shaikh ...Applicants

Vs.

The State of Maharashtra ...Respondent

Ms Pranali Kakade for the Applicants.
Shri A.S. Gadkari, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : OCTOBER 27, 2005.

P.C.:

1. Heard the Advocate appearing for the Applicants and the learned A.P.P. for the State.

2. The offence is under sections 147, 148, 149, 302 of the Indian Penal Code and under section 135 of the Bombay Police Act.

3. The first informant is a Police Constable attached to Jail Road Police Station. According to him, the co-accused Gafur Mahiboob Shaikh came to the Police Station with a blood stained sickle in his hand and stated that he assaulted the deceased. According to him he had assaulted the deceased initially by a sword and thereafter by a sickle and killed him. According to the F.I.R., the deceased was having illicit relationship with the sister of the said

co-accused Gafur and the said co-accused visited the house of the sister after he received a phone call from the husband of the his sister that the deceased had arrived at the house of the sister. So far as the present Applicants are concerned, the Applicant Nos.1 and 3 are the real brothers of the co-accused Gafur and the Applicant No.2 is the brother-in-law of the sister of the co-accused Gafur.

4. The learned Advocate for the Applicants submitted that even according to the F.I.R. which is registered by a Police Head Constable, no role has been ascribed to the Applicants and the deceased succumbed to the injuries sustained as a result of the assault made by the co-accused Gafur.

5. The learned A.P.P. pointed out the statements of the witnesses who have stated about the presence of the Applicants and who have ascribed a clear role to the Applicants. The learned A.P.P. submitted that there is material to show prima facie involvement of the Applicants.

6. I have considered the submissions. The statement of Smt Aminabi the sister of the Applicant Nos.1 and 3 has been recorded. According to her

version, the deceased came to her house in presence of her husband. According to her at 10.00 in the night her brother Gafur, the Applicant No.2 and the Applicant No.3 came to her house. According to her, co-accused Gafur assaulted her by hand and thereafter the co-accused Gafur started running after the deceased. There is a statement of another witness Prabhavati Gurav who stated that in the night of the relevant day, the deceased had come to the place of Aminabi who is the sister of co-accused Gafur and they were chit-chating. According to her version, at that time the brother of Aminabi, her husband and brother-in-law came there with swords and sickles in their hands. According to her, she heard screams of the deceased to the effect that "Gafur I have committed a mistake". She has not stated anything about the specific role of the Applicants herein. Same is the case with the statement of the other witness Gurubai. The statement of another witness Sunita gives similar version.

7. While rejecting the Application for bail made by the Applicants, the learned Judge has observed that there is a confessional statement of co-accused Umar. The learned Judge has observed that the statements of the witnesses indicate that the Applicants have

participated in the offence.

8. On plain reading of the F.I.R.it appears that it is the co-accused Gafur who assaulted the deceased by a sword and a sickle. He was called to the house by the other co-accused Umar who is the husband of Gafur's sister. In the F.I.R. which is registered by the Police Officer, stand is taken that it is co-accused Gafur who is instrumental in causing death of the deceased. The statements of the other witnesses show mere presence of the Applicants at the scene of offence may be with swords. Thus, the real role in the offence is played by the co-accused Gafur and to some extent by the husband of Aminabi i.e. co-accused Umar.

9. In view of completion of investigation, case is made out for enlarging the Applicants on bail.

10. Hence, I pass the following order:

: O R D E R :

i) The Applicants shall be enlarged on bail in connection with **C.R.No.173 of 2005 registered with Jail Road Police Station, Solapur,** subject to

furnishing a personal bond of **Rs.15,000/- each** with one or two local sureties in the like amount.

ii) The Bail is granted subject to condition that the Applicants will report to the concerned Police Station once in fortnight till the conclusion of the trial.

iii) The Bail is granted subject to condition that the Applicants shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

iv) The Applicants shall co-operate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicants to delay the trial may be a ground for cancellation of bail.

v) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

JUDGE